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Supreme Court, U.S.
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No. 93-1965

In the Supreme Court of the United States

OCTOBER TERM, 1994

JOHN M. EDENFIELD AND JAMES C. EDENFIELD,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that the court of appeals erred in reversing the order of the district court dismissing the indictment in this case.

1. Petitioners were indicted by a grand jury sitting in the Northern District of Georgia. They were charged with one count of conspiracy to possess cocaine with the intent to distribute it, in violation of 21 U.S.C. 846, and three counts of possession of cocaine with the intent to distribute it, in violation of 21 U.S.C. 841. Pet. App. 57a.

On May 22, 1992, the district court granted petitioners' motion to dismiss the indictment on the ground that the egregious conduct of law enforcement officials in investigating petitioners offended due

process. The court found that the outrageous government misconduct resulted from a combination of factors—the political and personal interest of the law enforcement officials, their selection of the investigatory target with a contingent fee agreement with the informant "to get an Edenfield," and the informant's degree of involvement as a government agent in the crime charged. Pet. App. 1a-45a, 57a-58a.

The court of appeals reversed and remanded for further proceedings. Pet. App. 46a-65a. It concluded that the government's conduct in investigating petitioners did not violate their due process rights. The court stated that evidence of an officer's possible motives did not establish a due process violation; only a showing of outrageous misconduct could amount to such a violation. *Id.* at 62a-63a. The court also stated that the government did not instigate the crimes with which petitioners were charged; rather, the evidence showed that petitioners were not mere users but "were long-time and admitted distributors [of cocaine]." *Id.* at 63a-64a. "Simply put," the court concluded, "nothing about the government's conduct in this case is shocking to the universal sense of justice of the due process clause." *Id.* at 64a (emphasis and internal quotation marks omitted). Accordingly, the court reversed the dismissal of the indictment. *Id.* at 65a.

2. Petitioners contend (Pet. 17-23) that the court of appeals, in concluding that their due process rights were not violated, erroneously ruled that the motivation of the government agents is irrelevant. Petitioners also contend (Pet. 24-30) that the court of appeals erred in failing to consider the extent of their suspected involvement in the distribution of cocaine. Whatever the merits of petitioners' contentions, they are not presently ripe for review by this Court. The court of appeals' decision

places petitioners in precisely the same position they would have occupied if the district court had denied their motion to dismiss. If petitioners are acquitted following a trial on the merits, their contentions will be moot. If, on the other hand, petitioners are convicted and their convictions are affirmed on appeal, they will then be able to present their contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of a final judgment against them. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DREW S. DAYS, III
Solicitor General

JULY 1994

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* Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.